DEPARTMENT OF STATE REVENUE

04-20170085.LOF

Letter of Findings: 04-20170085
Gross Retail and Use Tax
For the Years 2013 and 2014

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Food Manufacturer's protest of an audit assessment of additional sales and use tax was sustained in part and denied in part; the Department agreed that software licenses should be allocated on a "global" and not a nationwide basis, that tax should not have been assessed on payments for services, and that tax should not have been assessed on lease payments for real property.

ISSUES

I. Gross Retail and Use Tax - Software License Allocation.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-1-27; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-5 et seq.; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Sales Tax Information Bulletin 8 (December 2016).

Taxpayer argues that it can provide additional information more accurately reflecting the allocation and taxability of software licenses purchased during the audit period and intended for use in multiple locations.

II. Gross Retail and Use Tax - Manufacturing Equipment.

Authority: IC § 6-2.5-5-3; Brandenburg Industrial Services Company v. Indiana Department of Revenue, No. 49T10-1206-TA-00037, 2016 WL 4239921 (Ind. Tax Ct. 2016); 45 IAC 2.2-5-10.

Taxpayer states that certain equipment purchased during the audit period is exempt from sales tax because the equipment is directly used in the production of Taxpayer's food products.

III. Gross Retail and Use Tax - Labor Charges.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2-5-4-1; IC § 6-2.5-5 et seq.; IC § 6-8.1-5-1(c); 45 IAC 2.2-4-2(a).

Taxpayer argues that the Department's audit erred in assessing tax on the price paid to a vendor because the vendor provided exempt labor services to relocate an item of equipment.

IV. Gross Retail and Use Tax - Exemption - Non-returnable Pallets.

Authority: IC § 6-8.1-5-1(c); 45 IAC 2.2-5-16(c)(1).

Taxpayer maintains that its purchases of pallets were exempt from sales tax because they were non-returnable pallets used for packing and shipping its finished food products.

V. Gross Retail and Use Tax - Laboratory Equipment.

Authority: IC § 6-8.1-5-1(c); Sales Tax Information Bulletin 75 (October 2016).

Taxpayer argues that the Department's audit was incorrect when it assessed sales tax on purchases of laboratory equipment.

VI. Gross Retail and Use Tax - Purchases for Which Tax Was Paid.

Authority: IC § 6-8.1-5-1(c).

Taxpayer explains that it has now provided documentation which establishes that it paid sales tax on original purchases but for which the audit assessed additional tax.

VII. Gross Retail and Use Tax - Tools and Repair Parts.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1(c).

Taxpayer maintains that the Department's audit erred in calculating the amount of tax due on the purchase of tools and repair parts withdrawn from its "tool room" for use within its manufacturing or research facilities.

VIII. Gross Retail and Use Tax - Promotional Items.

Authority: IC § 6-8.1-5-1(c).

Taxpayer states that the Department's audit incorrectly assessed tax on transactions which were, in fact, not purchases of tangible personal property but were exempt payments for services.

IX. Gross Retail and Use Tax - Lease Payments.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-1-5; IC § 6-2.5-5 et seq.; IC § 6-8.1-5-1(c).

Taxpayer states that audit's assessment of tax on lease payments was incorrect because Taxpayer did not lease tangible personal property but the payments were for the lease of real property.

STATEMENT OF FACTS

Taxpayer is a researcher, manufacturer, and distributor of food products. Taxpayer operates an Indiana research and development facility, an Indiana warehouse, and an Indiana manufacturing facility.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's sales tax returns and business records. The audit resulted in an assessment of additional sales and use tax based on an agreed-upon "statistical sample" of those purchase records. Taxpayer disagreed with a portion of the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for its protest. This Letter of Findings results.

I. Gross Retail and Use Tax - Software License Allocation.

DISCUSSION

Taxpayer purchased multiple software licenses from various vendors. Taxpayer argues that it has now provided additional information which establishes that the audit's original allocation of software licenses was incorrect. The audit assessed tax based on the "allocation" of software licenses between Indiana users and users outside of Indiana. Taxpayer contends that its additional documentation establishes that a greater percentage of the licenses were used outside Indiana than the amount originally determined by the Department's audit.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this Letter of Findings, as well as the original audit report, are entitled to deference.

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-5 et seq. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-1-2; IC § 6-2.5-4-1. A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

IC § 6-2.5-1-27 establishes that computer software constitutes "tangible personal property" subject to sales and use tax.

> "Tangible personal property" means personal property that:
> (1) can be seen, weighed, measured, felt, or touched; or
> (2) is in any other manner perceptible to the senses.
> The term includes electricity, water, gas, steam, and prewritten computer software. (Emphasis added).

The Department has explained that computer software - acquired and stored on servers located outside Indiana but accessed by persons within the state - is subject to Indiana's sales and use tax.

> If a taxpayer purchases multiple software licenses from a vendor for software that is **stored on taxpayer's server and accessed from the server**:
> • Sales tax is sourced per IC 6-2.5-13-1.
> • Use tax is sourced as follows:
> • If the server is located in Indiana, full amount for software licenses is subject to Indiana use tax, as the storage of the software in Indiana is considered a "use" of the software within the meaning of IC 6-2.5-3-1. However, a credit is permitted if sales/use tax is paid to another state (IC 6-2.5-3-5).
> • If the server is located outside Indiana, use tax is due on the portion of users in Indiana. If the taxpayer is given a license (or an allotment for permitted users) but is not the assigned license/user, that allotment of the license/user is not taxable in Indiana but does become part of the "available licenses." This is because the portion of the software accessed in Indiana is considered a "use" of the software within the meaning of IC 6-2.5-3-1. However, a credit is permitted if sales/use tax is paid to another state (IC 6-2.5-3-5).
> Sales Tax Information Bulletin 8 (December 2016), 20170125 Ind. Reg. 045170020NRA; See also Sales Tax Information Bulletin 8 (November 2011), 20111026 Ind. Reg. 045110660NRA. (**Emphasis in Original)**.

In this case, the Department's audit concluded that 52 percent of the software licenses were properly allocated to Indiana and subject to Indiana's sales/use tax provisions because the licenses were "used" within this state. That calculation was based upon a comparison between the number of licenses assigned to employees within Indiana and the number of licenses used by employees located in one of the other 49 states.

Taxpayer now states that - based upon supplemental documentation - that the 52 percent allocation was wrong. Based on a "global allocation" of the licenses, only 20 percent of the software licenses are taxable. Taxpayer arrives at this lower percentage by comparing the number of licenses used by employees within Indiana to the number of licenses used by persons in the other 49 states and the number of licenses assigned to persons outside the United States. Taxpayer's assertion is sufficiently well documented by persons within Taxpayer's "Information Management" division, and the Department is prepared to agree that - under IC § 6-8.1-5-1(c) - that the assessment should be adjusted to conform to Taxpayer's calculation that 20 percent of the software licenses are taxable.

FINDING

Taxpayer's protest is sustained.

II. Gross Retail and Use Tax - Manufacturing Equipment.

DISCUSSION

Taxpayer argues that the Department's audit erred when it assessed sales/use tax on the purchase items (or groups of like items) of equipment on the ground that the three items are "used directly in manufacturing." The Department's audit report contains no specific reason why these items were subject to tax.

As authority for its position that the three items are exempt, Taxpayer cites to 45 IAC 2.2-5-10 which provides:

> (a) In general, all purchases of tangible personal property by persons engaged in the processing or refining of tangible personal property are taxable. The exemption provided in this regulation [45 IAC 2.2] extends only to manufacturing machinery, tools, and equipment used in direct production. It does not apply to materials consumed in production or to materials incorporated into the tangible personal property produced. Additionally, the exemption provided in this regulation [45 IAC 2.2] extends to industrial processors. An industrial processor, as defined in IC 6-2.5-4-2, is one who:
> (1) acquires tangible personal property owned by another person;
> (2) provides industrial processing or servicing, including enameling or plating, on the property; and
> (3) transfers the property back to the owner to be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in his business of manufacturing, assembling, constructing, refining, or processing.
> (b) The state gross retail tax will not apply to sales of manufacturing machinery, tools, and equipment which are to be directly used by the purchaser in processing or refining tangible personal property.
> (c) Purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in processing or refining are exempt from tax; provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the tangible personal property being processed or refined. The property has an immediate effect on the article being produced if it is an essential and integral part of an integrated process which processes or refines tangible personal property.

The cited regulation derives from IC § 6-2.5-5-3, which provides an exception to the "general rule" that purchases of tangible property are subject to sales/use tax. The statute provides in part:

> (b) Except as provided in subsection (c), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.
>
> (c) The exemption provided in subsection (b) does not apply to transactions involving distribution equipment or transmission equipment acquired by a public utility engaged in generating electricity.

The three items - or groups of similar items - consist of; (1) computer "touch screens" which are used to "control the production equipment"; (2) "material handling" equipment used within the manufacturing process, and; (3), two "taptones," installed within the production process to "ensure that each bottle of finished goods has a tight seal."

As described, these items fall within the manufacturing process especially given the expansive interpretation of the "manufacturing exemption" in the Tax Court's 2016 decision in Brandenburg Industrial Services Company v. Indiana Department of Revenue, No. 49T10-1206-TA-00037, 2016 WL 4239921 (Ind. Tax Ct. 2016) (granting partial summary judgment in favor a demolition company which argued that removing scrap metal from demolished buildings constituted manufacturing), Taxpayer has provided sufficient information to the Department to concur that the items fall within the exemption provided under IC § 6-2.5-5-3.

FINDING

Taxpayer's protest is sustained.

III. Gross Retail and Use Tax - Labor Charges.

DISCUSSION

Taxpayer paid approximately $34,000 to a vendor named "Custom Mechanical Construction, Inc." Taxpayer maintains that the transaction was not subject to sales/use tax because the vendor provided only exempt services. According to Taxpayer, Custom Mechanical was hired to relocate a conveyor system. The Department's audit report made no reference to this specific transaction except to categorize it as subject to tax.

Pursuant to IC § 6-2.5-2-1, Indiana's sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-5 et seq. Taxable retail transactions involve the transfer of tangible personal property. IC § 6-2.5-1-2; IC § 6-2-5-4-1. A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2. Therefore, a transaction subject to Indiana's sales/use tax necessarily involves the transfer of "tangible personal property."

45 IAC 2.2-4-2(a) emphasizes that, "Professional services, personal services, and services in respect to property not owned by the person rendering such services are not 'transactions of a retail merchant constituting selling at retail', and are not subject to gross retail tax."

In order to buttress its claim that the "Custom Mechanical" provided only exempt services, Taxpayer has provided a copy of an internal email stating that the vendor "only provided labor for this project."

The Department is unable to agree that Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that the pending assessment was "wrong." Other than its internal communication, Taxpayer failed to provide any independent, third-party verification of its assertion that the transaction with "Custom Mechanical" was for exempt services and did not involve the transfer of tangible personal property.

FINDING

Taxpayer's protest is respectfully denied.

IV. Gross Retail and Use Tax - Exemption - Non-returnable Pallets.

DISCUSSION

Taxpayer maintains that its purchases of pallets are not subject to sales/use tax on the ground that the pallets are used to deliver finished goods to its customers. As authority for its position, Taxpayer cites to 45 IAC 2.2-5-16(c)(1). The regulation provides as follows:

> General rule. The receipt from a sale by a retail merchant of the following types of tangible personal property are exempt from state gross retail tax:
> (1) Nonreturnable containers and wrapping materials including steel strap and shipping pallets to be used by the purchaser as enclosures for selling tangible personal property. (Emphasis added).

Based upon information provided at the time of the original audit, the Department's audit found that 30 percent of the purchased pallets were used to transport "work in process" and that the remaining 70 percent were used to transport finished goods to its customers. Accordingly, the audit concluded that purchases of 30 percent of the pallets were exempt and 70 percent of the purchases were taxable. Taxpayer explains:

> [The assessment] was based on the best information available at the time of the audit. Based on that information, the auditor stated in the proposed assessment that pallets used for the movement of finished goods was taxable since the pallets used to move these goods were not shipped out to the customers, but rather remained in the plant.
> . . .
> Upon further discussion with staff of both the [manufacturing facility] and the [] warehouse, it has been determined that all [Taxpayer's] pallets are used either in the movement of [work in process] or in the final packaging of finished goods.

Taxpayer maintains that all pallets used in its manufacturing facility are exempt. Taxpayer further explains that all pallets used at its warehousing facility are used to ship goods to its customers and that all of these pallets are "non-returnable" as required under 45 IAC 2.2-5-16(c)(1). Taxpayer has provided information from its head of operations and its sales tax manager purporting to verify its claim that the exemption applies to the 70 percent of pallet purchases otherwise assessed during the audit.

Especially, given the functional operation of the warehouse facility along with information made available from additional documentation, the Department is prepared to agree that Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that this portion of the pending assessment was "wrong."

FINDING

Taxpayer's protest is sustained.

V. Gross Retail and Use Tax - Laboratory Equipment.

DISCUSSION

The Department's audit reviewed expenses related to Taxpayer's research and development department and made an "adjustment . . . to assess use tax on research and development purchases that do not meet the definition of 'equipment' such as lab gases, and lab supplies as described in Information Bulletin []75." See Sales Tax Information Bulletin 75 (October 2013), 20131127 Ind. Reg. 045130524NRA.

Taxpayer does not disagree with the audit's analysis or its calculations. As stated by Taxpayer, "[Taxpayer] concurs with [audit's] method and these factors." However, Taxpayer states that "in calculating the error rate this method was not consistently applied and there are several lab purchases for which the allocation factor was not applied." To that end, Taxpayer has supplied "Exhibit D" which outlines six highlighted purchases for which the audit purportedly miscalculated its own allocation factor.

Taxpayer has presented no "legal" issue and does not ask the Department to address the audit's analysis or calculations. Instead, Taxpayer asks the Department to reconcile the audit's decision as it applies to the six specific transactions set out in its Exhibit D.

In this respect, Taxpayer has not demonstrated that the assessments at issue were wrong as required by IC § 6-8.1-5-1(c). However, Taxpayer has raised a calculation question which warrants consideration. The Department's Audit Division is requested to review the six transactions and to make whatever reconciliation adjustment is warranted.

FINDING

Subject to review by the Department's Audit Division, Taxpayer's protest is sustained.

VI. Gross Retail and Use Tax - Purchases for Which Tax Was Paid.

DISCUSSION

Taxpayer argues that the Department's assessment of tax on six transactions was erroneous. Taxpayer explains:

> At the onset of the audit, invoices from the pull list were requested from [accounts payable]. At that time [the invoices] were not available to review. Some of these invoices have been obtained and several indicate that tax was included and paid with the invoice. [Taxpayer] request[s] that this tax paid be reflected in the calculation of the error rate.

Taxpayer summarizes these six particular transactions in its "Exhibit E." Accompanying that exhibit are copies of invoices along with a more detailed explanation from its accounts payable records. For example, one of the invoices indicates that it was a charge for "Service Repair Labor" while another one of the invoices specifically indicates that it includes a charge of $200.85 for "tax."

The Department made no specific findings as to these transactions except to designate them as taxable.

As in Part V above, Taxpayer has not conclusively established that any portion of the original assessment was wrong as required under IC § 6-8.1-5-1(c). However, Taxpayer has provided sufficient documentation justifying a review of that information in order to assure that the assessment was properly calculated. The Department's Audit Division is requested to review the six transactions and to make whatever adjustment is warranted.

FINDING

Subject to review by the Department's Audit Division, Taxpayer's protest is sustained.

VII. Gross Retail and Use Tax - Tools and Repair Parts.

DISCUSSION

Taxpayer purchased tools and repair parts which it temporarily stored within its "tool room." Taxpayer self-assessed use tax on 50 percent of tools and repair parts placed into the tool room inventory.

The Department's audit reviewed Taxpayer's "tool room file" inventory reports. The audit report explains that "[t]hese reports define what material was removed from inventory and where it was used, including the location and on what piece of equipment it went." The report explains that "[u]se tax was paid at the time the [tool room] inventory was purchased and not when removed, therefore the audit could not identify what lines in the sample were taxed." The audit provided "[c]redit for use tax paid . . . to the [T]axpayer on all purchases that went into the tool room inventory . . . ."

Taxpayer argues that the audit's sampling methodology was flawed. Taxpayer explains that when it purchased items - such as tools and replacement parts - it paid fifty percent of the tax due on these items because "[e]xact use of tool room items are unknown until withdrawn from inventory for use."

According to Taxpayer's protest, the "Department of Revenue auditor determined that the tool room [purchases] should be tested separately from the general sample population." Taxpayer "concurred" with the audit's methodology. However according to Taxpayer, the audit's final report was flawed because the "tool room general account . . . was [also] included in the general sample population." Taxpayer explains that "the result was that tool room activity was sampled both at the time of purchase and the time of withdrawal [from the tool room] leading to double sampling." In other words, items purchased for the tool room were taxed both at the time the taxable items were acquired and placed into inventory and were taxed a second time at the time the same items were withdrawn from the tool room.

IC § 6-2.5-2-1 imposes tax on retail transactions such as acquisition of tangible property for use within Taxpayer's tool room. The complimentary use tax is imposed on use tax on items which are used or consumed such as items withdrawn from the tool room. IC § 6-2.5-3-2. However the sales and use taxes are complimentary not cumulative.

By providing additional documentation and a detailed explanation of its records, Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that the audit's methodology was flawed and warrants detailed review to assure that tax was not imposed twice on the same inventory items designated for its tool room.

FINDING

Subject to review by the Department's Audit Division, Taxpayer's protest is sustained

VIII. Gross Retail and Use Tax - Promotional Items.

DISCUSSION

The Department's audit reviewed purchases of "promotional materials" purchased from vendors within Indiana and from vendors outside Indiana. According to the audit report, these promotional items were delivered to Taxpayer's "warehouse for distribution, free of charge, to customers throughout the U.S." The audit assessed tax on items purchased from Indiana vendors where Taxpayer failed to pay sales tax and failed to self-assess use tax. The audit pointed that there is no "temporary storage" exemption for sales tax for items purchased in Indiana, and Taxpayer "should have paid sales tax at the time of the purchase [from] an Indiana registered vendor." The audit report concluded that "[t]here is no exemption available for the purchase of promotional materials to be given away under IC 6-2.5."

Taxpayer "concur[s] with [the audit's] method and the Indiana allocation factor applied." However, Taxpayer explains that it has now obtained additional information from its sales and marketing department that establishes that some of the purchases reviewed by the audit were "for exempt professional services" and that for one transaction, "tax was paid on the invoice." In particular, Taxpayer asks that the Department review five transactions set out in its "Exhibit G."

Taxpayer has provided supplemental documentation purporting to support its position including internal emails, a budget worksheet, and a page from its accounts payable records.

With one exception, the Department does not agree that the information is sufficient to entirely sustain Taxpayer on this issue. The emails and budget worksheet are at best ambiguous on the question. In regards to four of the

transactions, Taxpayer has provided no third-party, source documentation which conclusively supports Taxpayer's assertions.

However, the Department agrees that the purchase from "Gallo Displays" should not have been assessed because the information provided establishes that tax was paid at the time of the original transaction. The documentation provided demonstrates that the difference between the cost of the original purchase and the amount eventually paid Gallo Displays is equal to seven percent. In the case of the Gallo Displays transaction, Taxpayer has met its burden under IC § 6-8.1-5-1(c) of establishing that this particular single assessment was "wrong."

FINDING

With the exception of the transaction entered into between Taxpayer and Gallo Displays, Taxpayer's protest is respectfully denied.

IX. Gross Retail and Use Tax - Lease Payments.

DISCUSSION

Taxpayer states that the audit's assessment included three "equipment rental" transactions. However, Taxpayer states that subsequent review of the transactions were "actually monthly lease payments for the rental of [its] distribution facility . . . ."

The audit report contains no specific reference or description of the three transactions except to include them on a list of items which were taxable.

IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-5 et seq. This tax is imposed on "gross retail income" received in a retail transaction. IC § 6-2.5-2-1. "Gross retail income" includes consideration received for the rental or lease of tangible personal property. IC § 6-2.5-1-5. (Emphasis added).

In this case, Taxpayer has provided documentation establishing that payments to an Indiana landlord were lease payments for the rental and use of "certain premises located in [Indiana]" and not for tangible personal property. The "Lease Agreement" provided by Taxpayer establishes that Taxpayer was the "tenant" using property provided by an Indiana "landlord." Therefore, the payments fall outside Indiana's sales tax régime.

Therefore, Taxpayer has met its burden of establishing that the imposition of sales tax on payments to the Indiana landlord was "wrong" as required by IC § 6-8.1-5-1(c) because, in these instances, Taxpayer was not renting or leasing "tangible personal property."

FINDING

Taxpayer's protest is sustained

SUMMARY

With the exception of the transaction set out in Part III and the specific purchases described in Part VIII and subject to the Audit Division's review, Taxpayer's protest is sustained.

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